RIZSILLA GLOBAL SDN BHD v. LEMBAGA KEMAJUAN TANAH PERSEKUTUAN

HIGH COURT MALAYA, JOHOR BAHRU
FREDRICK INDRAN XA NICHOLAS JC
[ORIGINATING SUMMONS NO: JA-24NCC-10-05-2020]
14 SEPTEMBER 2020

CIVIL PROCEDURE: *Discovery – Pre-trial discovery – Application for – Rules of Court 2012, O. 24 r. 7A(1) – Whether there was bona fide cause of action – Whether applicant stated clear and unequivocal grounds to support application – Whether merely fishing expedition – Whether discovery necessary – Whether appropriate case for exercise of provisions of O. 24 r. 8 of Rules of Court 2012*

This was an originating summons ('OS') filed by the plaintiff in order to obtain an order for 'pre-trial discovery' under O. 24 r. 7A(1) of the Rules of Court 2012 ('ROC 2012') against the defendant. From 2017 to 2019, the plaintiff had successfully applied for and obtained grants known as '4C permits' – for the extraction of sand and clay from four plots of land ('lots') owned by individual FELDA settlers – from the Kota Tinggi District Land Office and the Pengerang Sub-District Land Office ('the land offices'). In July 2019, the plaintiffs applied to renew the said permits for four lots for the year 2020; together with applying for fresh 4C permits for another two lots. However, the land office communicated their rejection of the plaintiff's application for the 2020 renewal of the said permits for the original four lots; and the granting of a fresh permit for one of the new lots; and as for the fresh 4C permit for the other new lot, no response was forthcoming from the land office. On enquiry from the land office as to the reason for the said rejections, the land office replied that it was confidential; but that an authorised officer from the plaintiff would be allowed to peruse relevant 'review letters' that may shed some light upon their enquiries. On the inspection of the relevant review letters by the authorised officer from the plaintiff, it was discovered that the applications for the 4C permits for 2020 were rejected as the defendant did not support the same, as they had done in previous years. Thus, having been duly appraised of the situation by the perusal of the review letters at the land office, but not having been permitted to secure copies of the same, the plaintiff demanded an explanation from the defendant for their failure to support their application for the said permits; and to furnish them with any review letters exchanged between the defendant and the land office. Hence, this action for 'pre-trial discovery' for the relevant documents and/or correspondence as listed in Lampiran A annexed to the OS.

Held (dismissing application):

(1) For the discretion vested in this court to be exercised in favour of the plaintiff, the following requirements would have to be fulfilled (i) that there must be a *bona fide* cause of action against the defendant shown by

A the plaintiff; (ii) that the plaintiff must establish that they require the information and/or documents which are in the possession, custody or control of the defendant; and (iii) that the information and/or documents sought are necessary for the plaintiff to properly institute proceedings against the defendant. (para 54)

B **(2)** The plaintiff had not stated clear and unequivocal grounds in support of their application for this pre-trial discovery, which disclosed the prospect of the defendant being made a party in subsequent proceedings; nor what indeed those proceedings could be; apart from a bare and rather vague assertion that the defendant was 'likely' to be a party in C some subsequent but undetermined proceedings. In other words, the existence of a cause of action against the defendant had singularly not been established by the plaintiff. (paras 55 & 56)

(3) In all likelihood, this was a situation akin to a case of the plaintiff embarking upon a 'fishing expedition' in an attempt to 'hook' the D defendant for an action that they may perhaps and indeed desire to stumble upon after the perusal of the documents that they have sought in this application. Surely upon the law, this was not the purpose of O. 24 r. 7A of the ROC 2012; and certainly fell far short of the requirements necessary for the successful application of the said order. E (para 57)

(4) A perusal of s. 71 read together with s. 72 of the National Land Code clearly demonstrates that the power and prerogative to issue 4C permits rests solely with the Land Administrator (*ie*, the land office); which by implication and without doubt signified that the defendant's views with F regard to the issuance, or otherwise, of the said permit stands merely and at most a contingent consideration with regard to the exercise of the discretion to decide one way or the other – which by virtue of the said sections of the National Land Code was solely incumbent upon the Land Administrator. (para 58)

G **(5)** This turned out to be an appropriate case for the exercise of the provisions of O. 24 r. 8 of the ROC 2012, in that this court stood satisfied that discovery was not necessary. (para 59)

Case(s) referred to:

H *Ahmad Zahri Mirza v. PricewaterhouseCoopers Capital Sdn Bhd & Ors [2015] 7 CLJ 930 HC* ***(refd)***

Billion Prima Sdn Bhd & Anor v. Nutech Company Ltd & Anor [2017] 1 CLJ 179 HC ***(refd)***

Infoline Sdn Bhd v. Benjamin Lim Keong Hoe [2017] 8 CLJ 554 CA ***(refd)***

Mohamad Alhamdu Zainuddin v. ACP Khaw Kok Chin Pengerusi, Lembaga Tatatertib I *Briged Utara Pasukan Gerakan Am, PDRM, Ulu Kinta, Perak & Ors [2017] 3 CLJ 709 HC* ***(refd)***

Ong Commodities Pte Ltd v. Kek Tek Huat Sdn Bhd & Anor [2015] 10 CLJ 585 HC ***(refd)***
Rohana Ariffin & Anor v. Universiti Sains Malaysia [1989] 1 MLJ 487 ***(refd)***
Shaw v. Vauxhall Motors Ltd [1974] 1 WLR 1035 ***(refd)***

Legislation referred to:
Evidence Act 1950, ss. 123, 131
National Land Code, ss. 71, 72
Rules of Court 2012, O. 24 rr. 7A(1), (3), 8

For the applicant - M Rishee & Munawar Kabir Mohd Zainal Abidin; M/s Munawar & Assocs
For the respondent - Karlos Israphil; M/s Amin Karlos

Reported by Suhainah Wahiduddin

JUDGMENT
(encl. 1)

Fredrick Indran XA Nicholas JC:

Introduction

[1] This is an originating summons ("OS") dated 15 May 2020 filed by the plaintiff in order to obtain an order for "pre-trial discovery" under O. 24 r. 7A(1) of the Rules of Court 2012 ("ROC 2012") against the defendant with regard to the documents and/or correspondence as listed in 'Lampiran A' annexed to the OS.

The Matrix

[2] From 2017 to 2019 the plaintiff had successfully applied for and obtained grants of what is known as "4C permits" – for the extraction of sand and clay from four plots of land ("lots") owned by individual FELDA settlers - from the Kota Tinggi District Land Office and the Pengerang Sub-District Land Office (collectively referred to hereinafter as "the land office"). It is to be noted that there was no contractual nexus between the parties hereto as regards the mineral/clay extraction activities from the lots above.

[3] The validity of each 4C permit was for a duration of one year, expiring at the end of the calendar year in which it commenced. The letters from the land office with regard to the said permits for the four lots can be found in "exh. MIN-1" of the plaintiff's affidavit-in-support affirmed on 14 May 2020 (encl. 2).

[4] In or about the month of July, 2019 the plaintiffs applied to renew the said permits for the four lots for the year 2020; together with applying for fresh 4C permits for another two lots.

[5] Between late January and mid-February 2020, the land office communicated their rejection of the plaintiff's application for the 2020 renewal of the said permits for the original four lots; and the granting of a fresh permit for one of the new lots (see "exh. MIN-3" of the plaintiffs affidavit-in-support affirmed on 14 May 2020 (encl. 2); and as for the fresh 4C permit for the other new lot – no response was forthcoming from the land office.

[6] On enquiry to the land office as to the reason for the said rejections, the land office replied that it was confidential; but that an authorised officer from the plaintiff would be allowed to peruse relevant "review letters" ("surat ulasan") that may shed some light upon their enquiries.

[7] On the inspection of the relevant surat ulasan by the authorised officer from the plaintiff (ie, in the person of a director of the plaintiff, who also affirmed encl. 2), it was discovered that the applications for the 4C permits for 2020 were rejected as the defendant did not support the same, as they (the defendant) had done in previous years.

[8] Thus having being duly appraised of the situation by the perusal of the surat ulasan at the land office, but not having been permitted to secure copies of the same, the plaintiff instructed its solicitors to demand an explanation from the defendant for their failure to support their application for the said permits; and to furnish them with any review letters (surat ulasan) exchanged between the defendant and the land office.

[9] As there was no reply from the defendant to this pressing query by the plaintiff, a reminder was sent; but alas to no avail.

[10] Hence, this action for "pre-trial discovery" for the relevant documents and/or correspondence as listed in "lampiran A" annexed to this OS.

The Law

[11] Order 24 r. 7A(1) of the ROC 2012 reads as follows:

> Discovery against the other person (O. 24 r. 7A)
>
> 7A. (1) An application for an order for the discovery of documents before the commencement of proceedings shall be made by originating summons and the person against whom the order is sought shall be made defendant to the originating summons.
>
> (2) ...

[12] And O. 24 r. 7A(3) of the ROC 2012 reads as follows:

> (3) An originating summons under paragraph (1) or a notice of application under paragraph (2) shall be supported by an affidavit which shall:
>
> (a) in the case of an originating summons under paragraph (1), state the grounds for the application, the material facts pertaining to the intended proceedings and whether the person against whom the order is sought is likely to be party to subsequent proceedings in Court; and

(b) in any case, specify or describe the documents in respect of which the order is sought and show, if practicable by reference to any pleading served or intended to be served in the proceedings, that the documents are relevant to an issue arising or likely to arise out of the claim made or likely to be made in the proceedings or the identity of the likely parties to the proceedings, or both, and that the person against whom the order is sought is likely to have or have had them in his possession, custody or power.

[13] In the case of *Ong Commodities Pte Ltd v. Kek Tek Huat Sdn Bhd & Anor* [2015] 10 CLJ 585, Vazeer Alam Mydin Meera J (as His Lordship then was) lucidly illuminated the law and requirements relating to "pre-trial discovery" of documents thus:

[6] The remedy of pre-action discovery is primarily intended to enable justice to be done – see O. 24 r. 7A(5). The House of Lords in *Ashworth Hospital Authority v. MGN Ltd* [2002] 1 WLR 2033; [2002] 4 All ER 193, quoted with approval the words of Templeman LJ in *British Steel Corporation v. Granada Television Ltd* [1981] AC 1096 at p. 1132 to the following effect:

> In my judgment, the principle of the *Norwich Pharmacal* case applies whether or not the victim intends to pursue action in the courts against the wrongdoer, **provided that the existence of a cause of action is established and the victim cannot otherwise obtain justice**. The remedy of discovery is intended in the final analysis to **enable justice to be done**.

[7] The grant or refusal of an order for pre-action discovery under O. 24 r. 7A is a discretion vested in this court. The exercise of that judicial discretion is not arbitrary but done by application of set judicial principles. The principles upon which the courts exercise their discretion in this regard may be summarised as follows:

(a) the plaintiff/applicant must have or show a *bona fide* cause of action against the persons known or unknown;

(b) the plaintiff/applicant must establish that the plaintiff/applicant requires information and documents which are in the possession, custody or control of the defendant/respondent; and

(c) the information and documents sought are necessary for the plaintiff/applicant to properly institute proceedings against persons known or unknown.

[8] In this regard, the affidavit in support of the application must meet the following requirements:

(a) the affidavit must specifies or describes the documents sought;

(b) the affidavit must show, if practicable by reference to any pleading served or to be served in the proceedings, that such documents are relevant to an issue arising or likely to arise out of the claim made or likely to be made in the proceedings, or identity of the likely parties to the proceedings, or both;

A (c) the affidavit must show that the person against whom the order is intended to be made is likely to have or have had such documents in his possession, custody or power, and

(d) in the case of r. 7A(1), the affidavit must state the grounds on which the person against whom the order is intended is likely to be party to subsequent proceedings.

B

(See *Shaw v. Vauxhall Motors Ltd* [1974] 1 WLR 1035; [1974] 2 All ER 1185 CA; and the commentary in the *Malaysian Civil Procedure 2015*, vol. 1, Sweet & Maxwell, at p. 353.) (emphasis added)

The Plaintiff's Stance

C

[14] The plaintiff referred to "lampiran A" of the originating summons and the plaintiff's affidavit-in-support in which the plaintiff's submits that they complied with the requirements of O. 24 r. 7A(3) of the ROC 2012 since they:

D (i) have stated the facts sufficiently to explain why pre-action discovery is necessary;

(ii) stated that there is a possibility that the defendant may be a party to intended proceedings;

E (iii) identified clearly and precisely the relevant documents that the plaintiff's intends to seek an order for discovery; and

(iv) that the documents sought to be discovered are in the possession, power and custody of the defendant.

F **[15]** The plaintiff submits that the pre-trial discovery order sought by the plaintiff against the defendant is needed to assist the plaintiff to determine whether they have a viable claim against the defendant. The plaintiff referred to the Court of Appeal case of *Infoline Sdn Bhd v. Benjamin Lim Keong Hoe* [2017] 8 CLJ 554; [2017] 6 MLJ 363 which held that:

G [37] *With those considerations, what O. 24 r. 7A then requires from the applicant is an explanation as to why pre-action discovery and not discovery in the course of action or proceedings is necessary. The requisites in O. 24 r. 7A(3) indicate that pre-action discovery is really to assist a prospective litigant plaintiff to determine whether he has a viable claim against the intended defendant*

(emphasis added)

H **[16]** The plaintiff also referred to the case of *Ahmad Zahri Mirza v. PricewaterhouseCoopers Capital Sdn Bhd & Ors* [2015] 7 CLJ 930; [2015] MLJU 878 which held that:

I [37] *Caught in this unenviable situation where the Plaintiff knows there is an amount due to him and yet at the same time not being able to know how much and hence not being able to reasonably accept or reject the sum proposed by Megawisra, in all fairness to the Plaintiff, he should be allowed discovery of the Valuation Report of*

the AIMS Group as may be in the possession of the Ds. The justification becomes even more compelling when Megawisra had already, for all intents and purposes, received the full consideration bargained for from D3.

Whether the documents sought in the pre-action discovery are necessary in that it would help the Plaintiff to assess if he has a viable claim against Megawisra and to fill the void and gaps in the Plaintiff's knowledge of his claim

(emphasis added)

[17] Based on the above authorities, it is clear that the documents sought to be discovered by the plaintiff are needed to assist the plaintiff to ascertain as to whether they have a cause of action against the defendant for rejecting their 4C 2020 permit application as they are caught in an unenviable situation as to (know) why their 4C 2020 permit application was rejected when they have taken the same exact steps in their previous applications for their 4C permits that were granted.

[18] The plaintiff strenuously refutes the defendant's allegations that this application is a "fishing expedition".

[19] The case of *Billion Prima Sdn Bhd & Anor v. Nutech Company Ltd & Anor* [2017] 1 CLJ 179; [2017] 10 MLJ 213 held that:

In my view, I would hold that a 'fishing expedition' in the context of discovery refers to the aimless trawling of an unlimited sea. Where, on the other hand, the party concerned knows a specific and identifiable spot into which he wishes to drop a line (or two), I would not regard that as a 'fishing expedition'. (emphasis added)

[20] Furthermore, this case above allowed for pre-trial discovery against third parties as the defendants had described documents that were sought to be discovered with reasonable precision and also the third party admitted that they were in possession, custody and power of the documents that were sought to be discovered.

[21] The plaintiff states that they were given a legitimate expectation to the effect that they would obtain all review letters (surat ulasan) between the defendant and the relevant land office since during their previous applications, they were furnished and copied with the review letters (surat ulasan) between the defendant and the land office as seen in "exh. MIN-6" of the plaintiff's affidavit-in-reply.

[22] The plaintiff's was also given a legitimate expectation that their 2020 4C permit applications would be supported by the defendant since their applications were supported by Gabungan Ketua Peneroka JKKR dan Ketua Kampung JKKK FELDA Wilayah Johor Bahru (who are the main contractors for earth and mineral extraction for the FELDA settlors in Johor Bahru and also since the settlers of the lots mentioned in "exh. MIN-2" of the plaintiff's affidavit-in-support allowed the plaintiff to extract 4C sand and clay for their respective lots (see pp. 69 to 83 "exh. MIN-6" of the plaintiff's affidavit-in-reply).

[23] Hence the plaintiff submits that the defendant clearly gave the plaintiff a legitimate expectation and to now not give the plaintiff's any reasons for the rejection of their 2020 4C permit application is a breach of natural justice and procedural fairness as it has restricted the plaintiff's ability to ascertain the rejection of their 2020 4C permit application and also denies them the right to be heard.

[24] This point is illustrated in the case of *Rohana Ariffin & Anor v. Universiti Sains Malaysia* [1989] 1 MLJ 487 which held that:

> (2) It is well-established principle of administrative law that anything that restricts or appears *to restrict the defendant's ability to present his case may be held to be a breach of procedural fairness* and is thereby susceptible to judicial review. In this case the disciplinary authority had refused to accede to the requests of the applicants' solicitors and counsel for pre-trial discovery. *This was tantamount to denying the applicants their right to make written representations. The right to be heard necessarily means the right to know the case against oneself.*
>
> (3) The copy of the record of proceedings before the disciplinary authority showed that over the objections of counsel for the applicants, members of the disciplinary committee persisted in telling the student witnesses before they testified what evidence was expected of them. *This showed that justice was not being done and was a breach of the principle that justice should not only be done but should manifestly and undoubtedly be seen to be done.*
> (emphasis added)

[25] Furthermore, the case of *Mohamad Alhamdu Zainuddin v. ACP Khaw Kok Chin Pengerusi, Lembaga Tatatertib Briged Utara Pasukan Gerakan Am, PDRM, Ulu Kinta, Perak & Ors* [2017] 3 CLJ 709; [2017] 10 MLJ 161 held that:

> *It cannot be overly stated the importance of having all pertinent and relevant information and documents to enable the court to come to a just conclusion of the matter before it.* I would like to reaffirm the speech of HRH, the late Sultan Azlan Shah FCJ (as HRH then was) in the case of *Pengarah Tanah dan Galian, Wilayah Persekutuan v. Sri Lempah Enterprise Sdn Bhd* [1979] 1 MLJ 135:
>
> > ... Every legal power must have legal limits, otherwise there will be dictatorship. In particular, it is a stringent requirement that discretion should be exercised for a proper purpose, and that it should not be exercised unreasonably. In other words, every discretion cannot be free from legal restrain; where it is wrongly exercised, it becomes the duty of the court to intervene. The courts are the only defense of the liberty of the subject against departmental aggression. In these days when government departments and public authorities have such great powers and influence, this is a most important safeguard for the ordinary citizen: so that the courts can see these great powers and influence are exercised in accordance with the law. I would once again

> emphasise what has often been said before, that 'public bodies must be compelled to observe the law and it is essential that bureaucracy should be kept in its place ...
>
> *There is in our administrative and judicial system a legitimate expectation that procedural fairness would be maintained throughout an administrative process. Procedural fairness in administrative proceedings is an essential element in administrative functioning.* (emphasis added)

[26] Based on the above the plaintiff prays for an order for pre-trial discovery of the relevant documents.

The Defendant's Point of View

[27] Rule 7A under O. 24 must be read together with r. 8, that even if the plaintiff/applicant fulfills all of the requirements set out above, the court will only allow the application if the plaintiff/applicant satisfies the court that the application is necessary at that stage, either:

(i) for disposing fairly of the case or matter; or

(ii) for saving costs.

[28] Further, it is established law that the application for discovery of documents, regardless of whether it is made before or after the action is commenced, cannot be used by the plaintiff/applicant as a fishing expedition.

[29] The paramount issue to be decided by this court is whether the plaintiff has, or has shown, that it has a *bona fide* cause of action against the defendant being one of the requirements which the plaintiff must fulfill.

[30] In this regard, the plaintiff must identify and state either in its affidavit or by way of a "proposed statement of claim" annexed to its affidavit, the possible cause(s) of action it has or may have against the defendant, as well the grounds on which the defendant is likely to be party to subsequent proceedings.

[31] In absence of that, the plaintiff's application for discovery is just a fishing expedition.

[32] Further, there are no materials before this court upon which a determination can be made under O. 24 r. 8 of the ROC 2012 on whether the documents sought to be discovered are relevant or necessary at this stage, either for disposing fairly of the case or matter or for saving costs.

[33] The requirement for the plaintiff/applicant to state the possible cause of action in its pre-action discovery application is explained by Buckley LJ in *Shaw v. Vauxhall Motors Ltd* [1974] 1 WLR 1035 as follows:

> This power to order discovery before proceedings are commenced is certainly not one which should be used to encourage fishing expeditions to enable a prospective plaintiff to discover whether he has in fact got a

A case at all. I fully agree with what Lord Denning MR has said with regard to the desirability of a prospective plaintiff who proposes to make application for discovery under section 31 of the Act to formulate the nature of his allegations and his claim in writing before discovery and before launching any application under the section; and when he brings his application before the court, it seems to me that it must still be for him
B to satisfy the court that the order he is seeking will, or at least is likely to, assist in disposing of the dispute between the parties fairly or result in the saving of costs. In that way it seems to me that r. 8 of R.S.C., Ord. 24 is applicable to applications under this section of the Act as it is to other applications for discovery of particular documents under Ord. 24.

C **[34]** This, the plaintiff has failed to do.

[35] As can be seen from encl. 2, the main and in fact only ground stated by the plaintiff for applying for discovery of the subject documents is that the plaintiff wants to know the reason(s) why its applications were rejected (by the land office) for it to ascertain what cause of action it has against the
D defendant.

[36] To quote the plaintiff's explanation in this regard:

Saya dinasihatkan oleh Peguamcara Plaintif dan sesungguhnya percaya bahawa Plaintif mempunyai hak untuk mendapatkan semua
E dokumen-dokumen dan surat ulasan daripada Defendan untuk sebab-sebab permohonan Plaintif di Ekshibit "MIN-02" ditolak supaya Plaintif dapat mengetahui apa kausa tindakannya terhadap Defendan. Saya sesungguhnya percaya bahawa Defendan dalam tindakan ini, berkemungkinan besar akan menjadi pihak dalam prosiding yang diniatkan atau selanjutnya dalam Mahkamah.

F (encl. 2/para. 5).

[37] There is no "proposed statement of claim" produced by the plaintiff in any of its affidavit. There is also no statement in its affidavits which identifies any possible cause of action against the defendant namely, whether
G under contract, common law or statute.

[38] The mere fact that the defendant did not support the plaintiff's application, which may or may not have been a factor taken into consideration by the land office in deciding to reject the applications, does not in itself give rise to an actionable cause of action by the plaintiff against
H the defendant.

[39] This is because under s. 71 (read with s. 72) of the National Land Code ("NLC"), the power and prerogative of issuing 4C permits to extract, remove and transport rock material from land, whether it is state land or alienated land as in this case, lies solely with the Land Administrator.
I DBA/TAB 7/pp. 55 to 58

[40] There are no provisions in NLC or other statutes which require the Land Administrator (land office in this case) to seek and/or consider the defendant's views when deciding upon 4C permit applications involving lands owned by FELDA settlers.

[41] Therefore, the Land Administrator (land office in this case) has full power and discretion to decide whether to approve or reject the plaintiff's applications, regardless of the defendant's views.

[42] If the plaintiff takes issue with the rejection of its 4C permit applications then surely the plaintiff's cause of action, if there is any at all, would be against the land office as the decision-making authority and not the defendant.

[43] By not stating what possible cause of action it has against the defendant, the plaintiff has failed to demonstrate to this court that the disclosure of the subject documents is necessary as required under O. 24 r. 8 of the ROC 2012.

[44] A bare statement by the plaintiff in encl. 2 that the defendant is likely to be a party in subsequent proceedings, without providing any grounds to support such a statement, falls short of meeting the requirements under O. 24 rr. 7A and 8 of the ROC 2012.

[45] The plaintiff filed this pre-action discovery application not because it has a possible cause of action or claim against the defendant which it intends to pursue.

[46] In actual fact, the plaintiff seeks to obtain the subject documents through this discovery process only for the purpose of making improvements to its future 4C permit applications to the land office to ensure that it is in line with applications by other companies that were approved by the land office.

[47] The plaintiff's solicitors' letter dated 7 February 2020 to the defendant, which was issued after the land office had rejected the new and renewal permit applications, reveals the plaintiff's true intention in applying for discovery of the subject documents. The relevant part of the letter is reproduced below:

> 4. Maka *tanpa memberi butir-butir alasan FELDA yang menyehabkan permohonan anak guam kami ditolak* oleh Pejabat Tanah Daerah Kecil Pengerang, Johor maka adalah *sukar untuk anak guam kami untuk memperkemaskan permohonan-permohonan tersebut supaya ia selaras dengan permohonan-permohonan dari syarikat lain yang telah dapat kelulusan.*
>
> (emphasis added)
>
> (encl. 2/exh. "MIN-5"/p. 61)

[48] Clearly, the plaintiff's application before this court is nothing more than a fishing expedition, if not an afterthought.

[49] The defendant then referred to the relevant parts in *Ong Commodities Pte Ltd v. Kek Tek Huat Sdn Bhd & Anor* (*supra*) where the learned High Court Judge gave a reminder of the purpose of a pre-action discovery order.

> [26] The plaintiff has stated in the grounds in support of this application that the plaintiff has reason to believe that the defendants had conducted themselves fraudulently or in an otherwise improper or negligent manner in respect of the charge; and therefore *the plaintiff seeks to obtain sufficient documentary evidence from the defendants to put the plaintiff in a position where it is able to make a reasonable assessment of the situation and decide whether to institute an action against the first defendant and/or such other parties. This express desire of the plaintiff is but a manifestation of an intention to go on a fishing expedition, in hope that something may get entangled in the net and finding some material upon which a charge could be hung. That is never the purpose of a pre-action discovery order*. See *ABX Logistics (Malaysia) Sdn Bhd v. Overseas Bechtel (Malaysia) Sdn Bhd* [2003] 7 CLJ 357. It is quite clear that the plaintiff has embarked on a fishing expedition and cast the net wide to seek information and documents from the defendant, which documents the defendants do not have, in the hope of stringing together a possible case against the defendants. That is not the purpose for an order of discovery. Mustil LJ in *Berkeley Administration Inc v. McClelland* [1990] FSR 381 at p. 383 held that:
>
> > It is plain ... that the plaintiff just does not believe anything that the defendants have said in the course of this discovery, and *would like to hunt around the documents in the hope that something useful would turn up enabling them to controvert what the defendants have said on oath. That is not what discovery is about at all.* (emphasis added)
>
> (DBS/TAB 5/pp. 44 to 45)

[50] Similarly with the plaintiff/applicant in *Ong Commodities Pte Ltd v. Kek Tek Huat Sdn Bhd & Anor*, the plaintiff here seeks to hunt around the subject documents with a hope to discover whether it has in fact got any case at all.

[51] Quoting from the plaintiff's own words in encl. 2:

> 15. ... Plaintif mempunyai hak untuk mendapatkan semua dokumen-dokumen ... supaya Plaintif dapat mengetahui apa kausa tindakannya terhadap Defendan.

[52] Therefore, the plaintiff's application for pre-action discovery of documents should fail.

[53] The defendant also raised the issue of s. 131 and s. 123 of the Evidence Act 1950 with regard to this matter; to which the plaintiff re-joined thereto in their submissions-in-reply. I do not propose to delve into the same as the cogency of its relevance to the factual matrix of this case stands somewhat exiguous.

The Findings

[54] Derived from the case of *Ong Commodities Pte Ltd v. Kek Tek Huat Sdn Bhd & Anor* it is plain that for the discretion vested in this court to be exercised in favour of the plaintiff in this particular case, the following requirements would have to be fulfilled:

(i) that there must be a *bona fide* cause of action against the defendant shown by the plaintiff;

(ii) that the plaintiff must establish that they require the information and/or documents which are in the possession, custody or control of the defendant; and

(iii) that the information and/or documents sought are necessary for the plaintiff to properly institute proceedings against the defendant.

[55] To cut to the chase, it is the view of this court that the plaintiff had not stated clear and unequivocal grounds in support of their application for this pre-trial discovery, which disclosed the prospect of the defendant being made a party in subsequent proceedings; nor what indeed those proceedings could be; apart from a bare and rather vague assertion that the defendant is "likely" to be a party in some subsequent but undetermined proceedings.

[56] In other words, the existence of a cause of action against the defendant had singularly not been established by the plaintiff.

[57] From the facts, and for all intents and purposes, this court could not shake off the perception that in all likelihood this was a situation akin to a case of the plaintiff embarking upon a "fishing expedition" in an attempt to "hook" the defendant for an action that they may haps and indeed desired to stumble upon after the perusal of the documents that they have sought in this application. Surely upon the law, this is not the purpose of O. 24 r. 7A of the ROC 2012; and certainly falls far short of the requirements necessary for the successful application of the said order.

[58] Further to this, a perusal of s. 71 read together with s. 72 of the NLC clearly demonstrates that the power and prerogative to issue 4C permits rests solely with the Land Administrator (*ie*, the land office); which by implication and without doubt signifies that the defendant's views with regard to the issuance, or otherwise, of the said permits stands merely and at most a contingent consideration with regard to the exercise of the discretion to decide one way or the other – which by virtue of the said sections of the NLC was solely incumbent upon the Land Administrator.

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Final Order

[59] Under the circumstances, this turns out to be an appropriate case (for the exercise of the provisions of O. 24 r. 8 of the ROC 2012, in that this court stands satisfied that discovery is not necessary and therefore, hereby dismisses the application, with costs in the sum of RM5,000 awarded against the plaintiff.

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